



City of Dallas

PUBLIC NOTICE

REQUEST FOR QUALIFICATIONS

PROFESSIONAL AND TECHNICAL CIVIL ENGINEERING SERVICES
FOR:

Clay Street Water Transmission Pipeline Replacement Project

Engineering & Environmental Services Department 187 SE Court Street
Dallas, Oregon 97338 PH. 503-831-3555 FAX 503-623-2339

SUBMISSIONS DUE: March 17, 2015, 4:00p.m

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PROJECT SCHEDULE

RFQ ADVERTISED: February 25, 2015

RFQ SUBMITTALS DUE: March 17, 2015, 4:00p.m.

SHORT LIST INTERVIEWS: (optional by City) March 19, 2015

FIRM SELECTION: Week of March 23, 2015

PROJECT DESIGN COMPLETION: June 15, 2015

The City reserves the right to make adjustments to the above noted schedule as necessary

CITY OF DALLAS
PUBLIC NOTICE
REQUEST FOR QUALIFICATIONS

Notice is hereby given that the City of Dallas, will receive Statements of Qualifications until 4:00 p.m. March 17, 2015 in the Office of the Engineering & Environmental Services Department, 187 SE Court Street, Dallas, Oregon 97338 for the following:

PROFESSIONAL AND TECHNICAL CIVIL ENGINEERING SERVICES for the **Clay Street Water Transmission Pipeline Replacement Project**, CITY OF DALLAS, OREGON.

The scope of the proposed project includes the necessary professional civil engineering services to complete the design of the Clay Street Water Transmission Pipeline Replacement Project. The selected design firm shall have demonstrated experience in geotechnical engineering, surveying, potable water pipeline design, including plan preparation and development of technical specifications. Firms must submit statements of qualifications based on providing and/or coordinating all services required for the complete design of this project. The selected firm will be required to complete the design by June 15, 2015.

This request for qualifications shall be used to compile a list of interested and qualified firms who will be ranked in accordance with procedures as outlined in this document and the City's Local Contracting Ordinance. Qualified firm(s) selected will negotiate contract scope and price on an individual project basis as they arise. Do not include any price or cost considerations with this Statement of Qualifications (SOQ). Request for qualifications (RFQ) format and other related information is available at the Office of Engineering & Environmental Services, 187 SE Court Street, Dallas, Oregon 97338 or at <http://www.dallasor.gov/bids.aspx>

Statements of Qualifications must be received electronically via email to Fred Braun at fred.braun@dallasor.gov on or before 4:00 p.m. on the 17th of March, 2015. No late responses, hardcopy, or faxed materials will be accepted.

REQUEST FOR QUALIFICATIONS INSTRUCTIONS AND CONDITIONS

2.1 GENERAL: Firms must study carefully and conform to these "Instructions and Conditions" so that their Statements of Qualifications (SOQs) will be regular, complete and acceptable.

2.2 STATEMENT OF QUALIFICATIONS:

All SOQs shall be legibly written in ink or typed and comply in all regards with the requirements of this solicitation. Statements of Qualifications shall be submitted in the prescribed format and in said manner as indicated in these solicitation documents. Use of recycled material is encouraged and the City reserves the right to use recycled material provided the provisions of ORS 279A.125 are met. The City of Dallas Review Committee reserves the right to reject any and all SOQs not in compliance with all prescribed public contracting procedures and requirements, reject for good cause any and all SOQs upon the finding that it is in the public interest to do so and waive any and all informalities.

2.3. RECEIPT AND OPENING OF STATEMENTS OF QUALIFICATION:

Qualifications statements shall be submitted prior to the time fixed in the advertisement for SOQs. SOQs received after the time so designated will be considered late and will not be opened. No responsibility will be attached to any official of the City for the failure to open a SOQ not properly identified. SOQs shall be opened so as to avoid disclosure of contents to competing firms during the process of negotiation. SOQs will not be available for public inspection until after such time that a contract is executed in accordance with ORS 279C.107.

2.4 NONDISCRIMINATION:

The successful firm agrees that, in performing the work called for by this RFQ and in securing and supplying materials, the firm will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap.

2.5 EMPLOYEES NOT TO BENEFIT:

No employee or elected official of The City of Dallas shall be admitted to any share or part of any potential contract or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. No firm shall provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of the City in violation of ORS Chapter 244.

2.6. CITY FURNISHED PROPERTY:

No material, labor or facilities will be furnished by the City unless otherwise provided for in future contracts for services.

2.7. COSTS:

All costs incurred by the firm in preparation of SOQs to this solicitation, including presentations to the City and/or for participation in an interview shall be borne solely by the submitting firm; the City shall not be liable for any of these costs.

2.8. DURATION OF REQUEST FOR QUALIFICATIONS

The list of firms generated from the responses to this RFQ shall be utilized for Civil Engineering design services for the following project:

Clay Street Water Transmission Pipeline Replacement Project.

SCOPE OF WORK AND CONDITIONS

3.1 PROJECT SCOPE

The scope of the proposed project includes the necessary professional civil engineering services to complete the design of the Clay Street Water Transmission Pipeline Replacement Project. The project involves the replacement of a 60-year old, 16 inch, coated steel pipeline located between the water treatment plant and the Clay Street Reservoir site. The project location and alignment are shown on the map identified as Attachment A. The design work shall include final plans and the technical specifications necessary for construction of the replacement pipeline, along with field surveying necessary to establish proper lines and grades. The replacement pipeline shall be 20 inch diameter, approximately 7900 LF, and include all necessary control and air relief valves. The project will be financed through the State Revolving Loan Program, and subject to Federal Requirements. The City has secured all necessary easements for the construction of the project. The selected design firm shall have demonstrated experience in geotechnical engineering, surveying, potable water pipeline design, including plan preparation and development of technical specifications. Firms must submit statements of qualifications based on providing and/or coordinating all services required for the complete design of this project. The selected firm will be required to complete the design by June 15, 2015.

3.2 QUESTIONS, ADDENDUMS, CONTACT WITH CITY PERSONNEL:

The City of Dallas shall not be held responsible for any oral instructions. Any changes to this RFQ will be in the form of a written addendum. Every request for an interpretation shall be made in writing and addressed to Fred Braun (187 SE Court Street, Dallas, OR 97338 or fred.braun@dallasor.gov) and, to be given consideration, must be received at least ten (10) days prior to the submittal due date. Any and all such interpretations or addendums will be placed on the City's website <http://www.dallasor.gov/bids.aspx> not later than five days prior to the due date for SOQs. Failure of any firm to receive any such addendum or interpretation shall not relieve such firm from any obligation under this RFQ as submitted. All addenda so issued shall become as much a part of the RFQ documents as if bound herein.

All firms interested in this project will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public, and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified above.

STATEMENT OF QUALIFICATIONS CONTENTS

4.1 GENERAL SUBMITTAL REQUIREMENTS: The submitted Statement of Qualifications should contain the required elements as stated in Sections 4.2, "Detailed Proposal Contents" and address the project scope in Section 3, "Scope of Work and Conditions." The City reserves the right to solicit additional information or clarification from the firms, or any one firm submitting SOQs, should the City deem such information necessary. Do NOT include any price or cost considerations with this Statement of Qualifications. Any firm-supplied material that is to be considered confidential must be so marked. The SOQs shall be submitted electronically via email to the City before the due date set in this RFQ. Include the project name in the email subject title. Applicants will receive an email response stating their application was received. No late responses, hardcopy, or faxed materials will be accepted. Please keep applications to a maximum of 15 pages (plus a maximum of 5 resumes) to address the SOQ criteria. File size must be kept under 30MB. If a firm wishes to submit a company brochure, this may be done under a separate cover. The brochure will not be used in the selection process and may be retained in the City files.

4.2 DETAILED STATEMENT OF QUALIFICATIONS CONTENTS:

The Statement of Qualifications shall contain responses to the required criteria in the following format:

Section 1 Cover Letter

- a. A one-page dated cover letter indicating the firm's interest in the project with signature shall be submitted containing the name, address, tax filing name and number of the corporation or business structure submitting the SOQ. Please indicate if the firm is a resident vendor, as defined in ORS 279A.120. Also submit the name, address, telephone, email, and title of the person authorized to represent the firm.

Section 2 Table of Contents

- a. A table of contents of the material included in the proposal.

Section 3 General Firm Information

- a. Provide a general description of the firm. Include a delineation of proposed services, company experience, and approach to the project. This section may include a flow chart, methodology, unique management strategies, etc. Provide an organizational chart showing key personnel and their work location(s).
- b. Demonstrate specific capabilities for fulfilling the project requirements, including completion date, according to similar previous experience including years of business, bankruptcy filings, and bonding capability.

- c. Describe your firm's internal procedures related to work quality and cost control.
- d. Identify any contract or subcontract held by the firm which has been terminated, in default, or had claims made against it that resulted in litigation or arbitration in the last five years.
- e. Provide information on the types and amounts of insurance carried by the firm.

Section 4 Experience, Organization, and Qualifications of the Project Team

- a. Provide organizational structure of teams who would be assigned to this project, including experience and relevance of key personnel assigned to this project. Identify relevant education, professional certifications, years of experience and resumes (5 maximum resumes) of key personnel.
- b. Identify a proposed project manager as a key point of contact for the City. Describe the project manager's experience with similar projects.
- c. Include names, address, phone number, and a statement of qualifications and experience of subcontractors that may be used to complete project tasks (geotechnical, surveyors, hydraulic studies, etc.).
- d. Provide evidence that the project team has an explicit understanding of the proposed project, and that all elements of the required design effort are included.

Section 5 Example Projects

- a. Describe similar projects performed within the last 5 years which best characterize your firm's capabilities, work quality, and cost control. Include project size, schedule, quality of performance, and role of participation in project by key personnel. For each project include the name, address, email, and phone number of a person who can be contacted regarding your performance on the project. When submitting projects for which your team worked in an auxiliary capacity or in a joint venture or partnership, include the name of the lead firm.
- b. Provide any written letters of reference from agencies with similar projects if available.

Section 6 Principal Office Location and Local Participation

- a. Identify the location of the firm's principal office and the office location of key staff expected to work on the project. Discuss staff availability and scheduling to work on City projects, in addition to ability to provide local presence for site visits and meetings.

Section 7 List of Exceptions

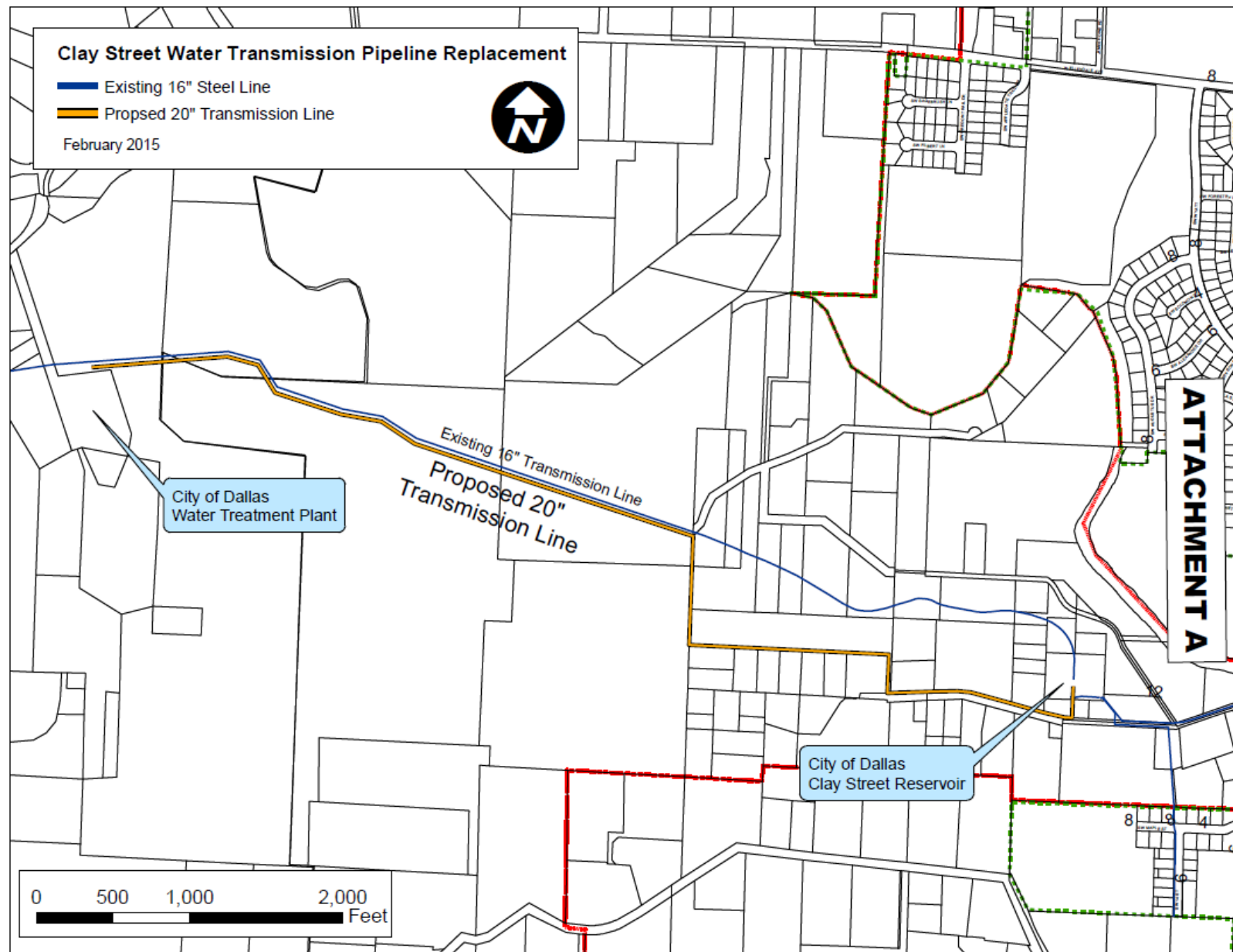
- a. This section shall describe any exceptions taken to any section in the RFQ.

EVALUATION AND SELECTION CRITERIA

5.1 STATEMENTS OF QUALIFICATION REVIEW: Firms will be selected through a qualifications-based selection process as described in the City's Local Contracting Ordinance and as provided under ORS 279. Each proposal will be evaluated based on responses provided to Sections 4, "Statement of Qualifications Contents" and addressing project scope as described in Section 3, "Scope of Work and Conditions" as outlined in this Section. The Review Committee will evaluate the submitted SOQs and will consist of select Engineering and Public Works Staff. Upon final selection of the most qualified firm(s), compensation and personal services contract scope and negotiations will take place. A sample Personal Services Contract may be found at the end of this document. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and a fair and reasonable fee that best represents the efforts required. If the City is unable to come to terms with the first choice firm, discussions shall be terminated and negotiations will begin with the second choice firm. The City reserves the right to reject any and all proposals.

5.2 EVALUATION CRITERIA: The following criteria will be considered in evaluating all proposals. Use of the rating points system is only a guide to the Review Committee. A major deficiency in any one category can disqualify the firm.

1. Content: (Section 4) 0-5 points Submitted Statement of Qualifications contain all required items as described in Section 4, "Statement of Qualifications Contents."
2. General Firm Information: (Section 4.2.3) 0-30 points The organization, experience, value engineering, capability, and approach offered by the firm will be evaluated in terms of its applicability to the requirements specified in this RFQ.
3. Experience, Organization, and Qualifications of the Project Team: (Section 4.2.4) 0-20 points Professional experience of key personnel and expected subcontractors with similar projects will be evaluated.
4. Example Projects: (Section 4.2.5) 0-20 points Applicability of recently completed projects by the firm to projects anticipated by the City. Consideration of the firm's ability to competently design and control costs, quality, schedule, and work flow.
5. Principal Office Location and Local Participation: (Section 4.2.6) 0-10 points Availability of firm and staff to promptly resolve design or project conflicts.
6. Overall Evaluation of the Firm: 0-15 points General overall evaluation of the firm and its perceived ability to best perform the required services.





**PERSONAL SERVICES AGREEMENT
WITH THE CITY OF DALLAS, OR
FOR: Clay Street Water Transmission Pipeline Replacement
Project**

THIS AGREEMENT made and entered into this 2nd day of April, 2015 by and between the City of Dallas, a municipal corporation of the State of Oregon, hereinafter called City, and **(Consultant Name Here)**, hereinafter called Contractor.

RECITALS

WHEREAS City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as possessed by Contractor, and

WHEREAS City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

THEREFORE the Parties agree as follows:

1. SERVICES TO BE PROVIDED

Contractor shall provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by (June 15, 2015). All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. COMPENSATION

City agrees to pay Contractor not to exceed **(Project Cost Estimate Here In Words and 00/100 Dollars) (\$000,000)** for performance of those services described in the Scope of Work, which payment shall be based upon the

following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.

- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT/DELEGATION

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- C. Contractor certifies that it currently has a City business license, if required, or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. INDEMNIFICATION

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or

invalidity shall not affect the validity of the remainder of this indemnification.

8. **INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. **Commercial General Liability Insurance**

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage Limit

General Aggregate	3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

B. **Commercial Automobile Insurance**

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

C. **Professional Liability Insurance**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.

D. **Workers' Compensation Insurance**

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law and shall comply with

ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126. Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.

E. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

F. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days notice of cancellation to the City.

G. Insurance Carrier Rating

Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

H. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be in effect until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for(name of project) . The City of Dallas, its officers, directors and employees shall be added as additional insured with respects to this contract. A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate.

I. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

J. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insured clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Office of City Manager
City of Dallas
187 SE Court St.
Dallas, Oregon 97338

Business Phone: 503-831-3500
Business Fax: 503-623-2339
Email Address: ron.foggin@dallasor.gov

Such policies or certificates must be delivered prior to commencement of the work.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. **METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information: Enter Appropriate Address Here

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination.

12. TERMINATION WITH CAUSE

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger

performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. ACCESS TO RECORDS

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. FORCE MAJEURE

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. NON-DISCRIMINATION

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. ERRORS

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. EXTRA (CHANGES) WORK

Only the City Engineer may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. WARRANTIES

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

20. ATTORNEY'S FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

21. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A and 279B, the provisions of which are hereby made a part of this agreement

23. CONFLICT BETWEEN TERMS

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

24. AUDIT

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

25. SEVERABILITY

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

26. COMPLETE AGREEMENT

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no

understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

CITY OF DALLAS

Consutlant Firm Name Here.

Signature

Signature

Ron Foggin, City Manager

Consultant Signature Authority & Title

Date

Date